53D CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { Ex. Doc. No. 182.

MONEYS DUE THE CHEROKEE NATION.

LETTER

FROM

THE SECRETARY OF THE INTERIOR,

TRANSMITTING

A complete account of all moneys due the Cherokee Nation under treaties, made in compliance with the act of Congress approved March 3, 1893.

JANUARY 9, 1895.—Referred to the Committee on Indian Affairs and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington, January 7, 1895.

SIR: I have the honor to herewith transmit, in compliance with the provisions of the third subdivision of article 2 of the agreement made December 19, 1891, with the Cherokee Indians, ratified by the act of Congress approved March 3, 1893 (27 Stats., 643), a certified copy of "a complete account of moneys due the Cherokee Nation under any of the treaties made in the years 1817, 1819, 1825, 1833, 1835-36, 1846, 1866, and 1868, and any laws passed by the Congress of the United States for the purpose of carrying said treaties, or any of them, into effect," prepared in accordance with the provisions of the said act of March 3, 1893, together with a certified copy of an act of the Cherokee national council accepting such accounting.

Very respectfully,

HOKE SMITH, *Secretary.*

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

UNITED STATES OF AMERICA.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., January —, 1895.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed statement is a true and literal copy of the original, as appears from the records and files of the Department.

In testimony whereof I have hereunto subscribed my name and caused the seal of the Department of the Interior to be affixed, the day and year first above written.

[SEAL.]

HOKE SMITH,
Secretary of the Interior.

The undersigned, appointed under the 3rd article of the agreement made at Tahlequah on the 19th day of December, 1891, between Commissioners on the part of the United States, and on the part of the Cherokee Nation, to "render to the Cherokee Nation, through any agent appointed by authority of the national council, a complete account of monies due the Cherokee Nation under any of the treaties ratified in the years 1817, 1819, 1825, 1828, 1833, 1835-6, 1846, 1866, and 1868, and any laws passed by the Congress of the United States for the purpose of carrying said treaties, or any of them, into effect," respectfully submit the following report:

TREATY OF 1817;

The treaty of 1817 provided for the cession of certain lands in Georgia, Tennessee and Alabama to the United States in consideration of certain lands, acre for acre, in the then Territory of Arkansas, on the Arkansas and White Rivers. Appended hereto are maps showing the several cessions of territory by the Cherokee Nation, and also to the Cherokee Nation, covered by the treaty of 1817[1] and subsequent treaties. The cessions to and by the United States are shown upon both maps in blue. No consideration other than land was made to the Cherokee Nation for the cession of the lands in the states named. The treaty provided, however, that the annuities accruing under former treaties should be paid to the Eastern and Western Cherokees in proportion to their numbers, and a census of those who had emigrated west of the Mississippi River as well as those remaining in the original country was to be taken to determine the respective amounts of the annuities due to each branch of the Nation.

These annuities arose under the treaty of June 26, 1794,[2] which stipulated that in lieu of all former sums to be paid annually the United States should furnish the Cherokee Nation with goods, annually, to the amount of $5,000; the treaty of October 2, 1798,[3] by which the United States agreed to furnish the Cherokee Nation annually, in addition to the annuities provided for in former treaties, goods to the amount of $1,000; and the treaty of October 25, 1805,[4] by which the United States guaranteed a further annuity of $3,000. Under these treaties, therefore, the Cherokee Nation was entitled annually to goods or money to the amount of $9,000.

The census provided for in the treaty of 1817 was not taken; but by the treaty of February 27, 1819,[5] it was agreed that the annuities should be paid two-thirds to the Cherokees east, and one-third to the Cherokees who had emigrated to Arkansas. These annuities were regularly paid according to this agreement to and including the year 1824.

TREATY OF 1804;

By a treaty made October 24, 1804,[6] an additional annuity of $1,000 per year was guaranteed to the Cherokee Nation. This treaty was mislaid in Washington and its existence seems to have been forgotten until 1824, when it was discovered and proclaimed on the 17th day of May. It is this treaty, made in 1804, which is alluded to in the

[1] U. S. Statutes at Large, Vol. 7, page 156.
[2] U. S. Statutes at Large, Vol. 7, page 43.
[3] U. S. Statutes at Large, Vol. 7, page 62.
[4] U. S. Statutes at Large, Vol. 7, page 93.
[5] U. S. Statutes at Large, Vol. 7, page 195.
[6] U. S. Statutes at Large, Vol. 7, page 228.

articles of agreement before-mentioned, (dated December 19, 1891,) as the treaty of 1825. No treaty, as a matter of fact, was made with the Cherokees in this year. The twenty years accrued annuity under this treaty was appropriated March 3, 1825,[1] and the accrued interest, amounting to $12,000, being for the average time of 10½ years at 6%, was appropriated June 14, 1836.[2] The annuity of $9,000, increased to $10,000 by the treaty of 1804, was fully, though by no means regularly, paid down to and including the year 1835, when it was commuted for the sum of $214,000, in accordance with the eleventh article of the treaty made December 29th of that year. There is nothing due the Cherokee Nation, therefore, under the treaty of 1817.

TREATY OF 1819;

By the treaty of February 27, 1819,[3] a further cession of land was made by the Cherokee Nation, the ceded lands being shown on the map hereto annexed in red. By the first article of this treaty it was stipulated that the reservations contained in the 2nd article of the treaty of Tellico, signed 25th October, 1805,[4] and a tract of land in Alabama, twelve miles square, were ceded to the United States in trust for the Cherokee Nation as a school fund; to be sold by the United States and the proceeds invested as provided in the 4th article of the same treaty. By article 4, it was stipulated that the reservations, and the tract reserved for a school fund in the first article of the treaty, should be surveyed and sold in the same manner and on the same terms with the public lands of the United States, and the proceeds invested under the direction of the President of the United States in stock of the United States, or such other stock as he might deem most advantageous to the Cherokee Nation.

The tract of land twelve miles square located on the Tennessee River in Madison County, Alabama, containing 93,938.16 acres was surveyed, and there have been sold, up to April 1, 1894, 67,657.63 acres, yielding $106,383.20, the several sums comprising which have been from time to time added to the school fund of the Nation. The reservations in the 2nd article of the treaty of Tellico (25th October, 1805), consisted of a small tract lying at and below the mouth of Clinch river; two sections of one square mile each, one at the foot of Cumberland mountain, the other on the north bank of the Tennessee river "where the Cherokee Talootiskee now lives". These tracts, being on the north side of the Tennessee river within the state of Tennessee, are indicated upon the accompanying map by letters "A", "B", and "C". Tennessee not being a public land state there was no authority for the survey and sale of these lands. They were claimed by white persons by virtue of Revolutionary land grants made by the State of North Carolina, and by other persons under grants made by the State of Tennessee, and after much controversy and compromise were finally confirmed to citizens of Tennessee.

The history of the litigation and subsequent disposal of these lands is of no importance beyond the fact that, although they were ceded by the Cherokee Nation to the United States in trust, for sale and the investment of the proceeds for the benefit of the Cherokee school fund, they were not so sold and the Cherokee Nation has derived no benefit

[1] U. S. Statutes at Large, Vol. 4, page 93.
[2] U. S. Statutes at Large, Vol. 5, page 45.
[3] U. S. Statutes at Large, Vol. 7, page 195.
[4] U. S. Statutes at Large, Vol. 7, page 93.

whatever from the cession. It seems clear that as these three tracts of land were a part of the consideration of the treaty of 1819, the Cherokee Nation should be paid their value at the time the treaty was made, with interest until the time of payment. The one-mile-square tracts contained 640 acres each. From the field notes of Col. Martin, on file in the Indian Office, it appears that the small tract contained, substantially, 420 acres. The total acreage of the three tracts was therefore 1,700 acres, which, at $1.25 per acre, would amount to $2,125, which sum, with interest from February 27, 1819, to the time of payment, is due to the Cherokee Nation.

TREATY OF 1828;

The treaty of 1828[1] was made with the Western Cherokees, who, under the provisions of the treaties of 1817 and 1819, had emigrated to Arkansas. It provided for the removal of that branch of the tribe from within the limits of Arkansas to substantially the present location of the Cherokee Nation in the Indian Territory. The Cherokee Nation east was not a party to the treaty and acquired no rights under it any further than that the Government agreed in the 8th article to remove and subsist for one year after arrival in the Indian Territory any Eastern Cherokees who desired to join that portion of the tribe which had emigrated and were then known as "Western Cherokees"; and in addition to pay the sum of $12.50 to each emigrant. Under article 5 of the treaty, the United States agreed to pay the Western Cherokees the sum of $50,000 as the difference in value between the lands in Arkansas and the lands in the Indian Territory; an annuity of $2,000 per year for three years, as indemnity for probable loss caused by the straying of stock; $8,760 for spoliations; and $2,000 annually for ten years for educational purposes. These sums were appropriated by the act of May 24, 1828,[2] and were fully and properly paid to the Western Cherokees.

TREATY OF 1833;

The treaty of February 14, 1833,[3] is practically a duplication of the treaty of 1828. In describing the boundaries of the land to be occupied by the Cherokees removing from Arkansas to what is now the Indian Territory, certain lands which had already been ceded to the Creek Nation, were included; and the purpose of the treaty of 1833 was to rectify this error, and to alter the boundary of the lands ceded to the Cherokees so as to exclude the Creek lands from the Cherokee grant, and to include other lands of equal area.

Both of these treaties (1828 and 1833) were made with the Western Cherokees, and the Eastern Cherokees had no interest in or rights under them except as has been hereinbefore stated. The claims of the Western Cherokees arising under these and subsequent treaties were referred to the Court of Claims by the act of February 25, 1889,[4] and adjudicated by decision No. 16,599, decided November 30, 1891. This adjudication disposes of all claims which arise under the treaties of 1828 and 1833, even if the stipulations of those treaties were not faithfully performed. As a matter of fact, however, the agreements contained in these treaties were carried out and there is consequently nothing due under them.

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[1] U. S. Statutes at Large, Vol. 7, page 311.
[2] U. S. Statutes at Large, Vol. 4, page 300.
[3] U. S. Statutes at Large, Vol. 7, page 414.
[4] U. S. Statutes at Large, Vol. 25, page 694.

TREATY OF 1835;

Subsequent to the treaty of 1828, and prior to the treaty of 1835,[1] almost continuous efforts were made to induce the Cherokee people to emigrate to the Indian Territory. In 1802 [2] a compact was entered into between the United States and the State of Georgia, whereby the latter ceded to the former all of its lands without its present boundaries, and the United States agreed to extinguish all the Indian titles within its present limits as soon as it could be reasonably and peaceably done. It was to carry out this agreement with the State of Georgia that numerous propositions were made to the Cherokee Nation to induce its emigration. In the meantime, the white population of Georgia was rapidly increasing and serious encroachments were being made upon the territory reserved to the Cherokees by the treaty of 1819. In addition to this individual encroachment the Legislature of Georgia had assumed to extend the jurisdiction of the State over the Cherokee Nation, and had enacted legislation tending to the destruction of the Cherokee national authority.

Under these circumstances a very small fraction of the Cherokee Nation, appreciating the impossibility of the continuance of Cherokee occupation of lands within the State of Georgia, made the treaty of New Echota, providing for the surrender of its eastern possessions and the emigration of the Nation west of the Mississippi. This treaty was repudiated by a very large majority of the Cherokee Nation who refused to emigrate under its provisions, and various propositions were made, both by the Principal Chief of the Nation, John Ross, and by representatives of the United States, looking to a satisfactory adjustment of the controversy. Nothing was accomplished under this treaty until the fall of the year 1837, except that those Cherokees in sympathy with the purposes of the treaty were removed, or removed themselves, west of the Mississippi. In 1837 the Cherokee Nation practically accepted the provisions of the treaty and agreed to remove, and did remove, under the direction of Mr. Ross, to the Indian Territory.

It is under this treaty that the chief claim of the Cherokee Nation against the United States arises. This claim has been in dispute since the date of the treaty; and the proper construction of this instrument has been the subject of innumerable reports, memorials, petitions and opinions. It becomes of importance, therefore, to carefully examine the true intent and meaning of this treaty.

The following extracts from the treaty itself and the supplementary articles thereto[3] cover the points at issue, and are here extended for convenience of reference:

ARTICLE 1. The Cherokee Nation hereby cede relinquish and convey to the United States all of the lands owned claimed or possessed by them east of the Mississippi river, and hereby release all their claims upon the United States for spoliations of every kind for and in consideration of the sum of five millions of dollars to be expended paid and invested in the manner stipulated and agreed upon in the following articles. But as a question has arisen between the commissioners and the Cherokees whether the Senate in their resolution by which they advised "that a sum not exceeding five millions of dollars be paid to the Cherokee Indians for all their lands and possessions east of the Mississippi river" have included and made any allowance or consideration for claims for spoliations it is therefore agreed on the part of the United States that this question shall be again submitted to the Senate for their consideration and decision and if no allowance was made for spoliations that then an additional sum of three hundred thousand dollars be allowed for the same.

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[1] U. S. Statutes at Large, Vol. 7, page 478.
[2] The Public Domain, page 80.
[3] U. S. Statutes at Large, Vol. 7, page 488.

Article 2nd describes the territory ceded to the Cherokee Nation, and contains the following clause:

In addition to the seven millions of acres of land thus provided for and bounded, the United States further guaranty to the Cherokee Nation a perpetual outlet west, and a free and unmolested use of all the country west of the western boundary of said seven millions of acres, as far west as the soverignty of the United States and their right of soil extend.

This article also describes the additional quantity of land in the Territory of Kansas, known as the neutral lands and shown upon the annexed map colored yellow.

ARTICLE 8. The United States also agree and stipulate to remove the Cherokees to their new homes and to subsist them one year after their arrival there and that a sufficient number of steamboats and baggagewagons shall be furnished to remove them comfortably, and so as not to endanger their health, and that a physician well supplied with medicines shall accompany each detachment of emigrants removed by the Government. Such persons and families as in the opinion of the emigrating agent are capable of subsisting and removing themselves shall be permitted to do so; and they shall be allowed in full for all claims for the same twenty dollars for each member of their family; and in lieu of their one year's rations they shall be paid the sum of thirty-three dollars and thirty-three cents if they prefer it.

Such Cherokees also as reside at present out of the nation and shall remove with them in two years west of the Mississippi shall be entitled to allowance for removal and subsistence as above provided.

ARTICLE 10. The President of the United States shall invest in some safe and most productive public stocks of the country for the benefit of the whole Cherokee nation who have removed or shall remove to the lands assigned by this treaty to the Cherokee nation west of the Mississippi the following sums as a permanent fund for the purposes hereinafter specified and pay over the nett income of the same annually to such person or persons as shall be authorized or appointed by the Cherokee nation to receive the same and their receipt shall be a full discharge for the amount paid to them viz : the sum of two hundred thousand dollars in addition to the present annuities of the nation to constitute a general fund the interest of which shall be applied annually by the council of the nation to such purposes as they may deem best for the general interest of their people. The sum of fifty thousand dollars to constitute an orphans' fund the annual income of which shall be expended toward the support and education of such orphan children as are destitute of the means of subsistence. The sum of one hundred and fifty thousand dollars in addition to the present school fund of the nation shall constitute a permanent school fund, the interest of which shall be applied annually by the council of the nation for the support of common schools and such a literary institution of a higher order as may be established in the Indian country. And in order to secure as far as possible the true and beneficial application of the orphans' and school fund the council of the Cherokee nation when required by the President of the United States shall make a report of the application of those funds and he shall at all times have the right if the funds have been misapplied to correct any abuses of them and direct the manner of their application for the purposes for which they were intended. The council of the nation may by giving two years' notice of their intention withdraw their funds by and with the consent of the President and Senate of the United States, and invest them in such manner as they may deem most proper for their interest. The United States also agree and stipulate to pay the just debts and claims against the Cherokee nation held by the citizens of the same and also the just claims of citizens of the United States for services rendered to the nation and the sum of sixty thousand dollars is appropriated for this purpose but no claims against individual persons of the nation shall be allowed and paid by the nation. The sum of three hundred thousand dollars is hereby set apart to pay and liquidate the just claims of the Cherokees upon the United States for spoliations of every kind that have not been already satisfied under former treaties.

ARTICLE 11. The Cherokee nation of Indians believing it will be for the interest of their people to have all their funds and annuities under their own direction and future disposition hereby agree to commute their permanent annuity of ten thousand dollars for the sum of two hundred and fourteen thousand dollars, the same to be invested by the President of the United States as a part of the general fund of the nation; and their present school fund amounting to about fifty thousand dollars shall constitute a part of the permanent school fund of the nation.

ARTICLE 12. * * * It is also understood and agreed that the sum of one hundred thousand dollars shall be expended by the commissioners in such manner as the committee deem best for the benefit of the poorer class of Cherokees as shall remove or have removed west and are entitled to the benefits of this treaty. The same to be

delivered at the Cherokee agency west as soon after the removal of the nation as possible.

ARTICLE 15. It is expressly understood and agreed between the parties to this treaty that after deducting the amount which shall be actually expended for the payment for improvements, ferries, claims, for spoliations, removal subsistence and debts and claims upon the Cherokee nation and for the additional quantity of lands and goods for the poorer class of Cherokees and the several sums to be invested for the general national funds; provided for in the several articles of this treaty the balance whatever the same may be shall be equally divided between all the people belonging to the Cherokee nation east according to the census just completed; and such Cherokees as have removed west since June 1833 who are entitled by the terms of their enrolment and removal to all the benefits resulting from the final treaty between the United States and the Cherokees east they shall also be paid for their improvements according to their approved value before their removal where fraud has not already been shown in their valuatio 1.

SUPPLEMENTARY ARTICLES TO TREATY OF 1835.

ARTICLE 1. It is agreed that all the pre-emption rights and reservations provided for in articles 12 and 13 shall be and are hereby relinquished and declared void.

ARTICLE 2. Whereas the Cherokee people have supposed that the sum of five millions of dollars fixed by the Senate in their resolution of —— day of March, 1835, as the value of the Cherokee lands and possessions east of the Mississippi river was not intended to include the amount which may be required to remove them, nor the value of certain claims which many of their people had against citizens of the United States, which suggestion has been confirmed by the opinion expressed to the War Department by some of the Senators who voted upon the question and whereas the President is willing that this subject should be referred to the Senate for their consideration and if it was not intended by the Senate that the above-mentioned sum of five millions of dollars should include the objects herein specified that in that case such further provision should be made therefor as might appear to the Senate to be just.

ARTICLE 3. It is therefore agreed that the sum of six hundred thousand dollars shall be and the same is hereby allowed to the Cherokee people to include the expense of their removal, and all claims of every nature and description against the Government of the United States not herein otherwise expressly provided for, and to be in lieu of the said reservations and pre-emptions and of the sum of three hundred thousand dollars for spoliations described in the 1st article of the above mentioned treaty. This sum of six hundred thousand dollars shall be applied and distributed agreeably to the provisions of the said treaty, and any surplus which may remain after removal and payment of the claims so ascertained shall be turned over and belong to the education fund.

But it is expressly understood that the subject of this article is merely referred hereby to the consideration of the Senate and if they shall approve the same then this supplement shall remain part of the treaty.

ARTICLE 4. * * * It is also understood and agreed, that the one hundred thousand dollars appropriated in article 12 for the poorer class of Cherokees and intended as a set-off to the pre-emption rights shall now be transferred from the funds of the nation and added to the general national fund of four hundred thousand dollars so as to make said fund equal to five hundred thousand dollars.

It will be observed that by article 8 of this treaty the United States agrees and stipulates to remove the Eastern Cherokees to their new home and to subsist them one year after their arrival there. Under the 15th article of the same treaty it is provided that the residuum of the five million dollars, after deducting the amount which shall be actually expended for the payment for improvements, ferries, claims, removal, subsistence, etc, shall be distribnted per capita among the Cherokees east. By article third of the supplementary articles to the same treaty an additional appropriation of $600,000 is made to include the expense of removal. The question at issue under the treaty of 1835 is: Is the expense of removal properly chargeable to the five million treaty fund?

THE INTENT OF THE TREATY OF 1835.

This treaty had its origin in an agreement made by a delegation of the Cherokee nation to submit to the Senate to fix the amount which should be allowed the Cherokees for their claims and for a cession of

their lands east of the Mississippi river. Upon this submission the Senate advised "that a sum not exceeding five millions of dollars be paid to the Cherokee Indians for all their lands and possessions east of the Mississippi river".

A question arose between the treaty parties whether, in fixing this sum "not exceeding five millions of dollars", the Senate had included and made any allowance for claims for spoliations, and it was agreed that this question should be submitted again to the Senate, and if no allowance was made for this object, that an additional sum of three hundred thousand dollars be allowed therefor. (Art. 1, Treaty of 1835).

A further question also arose between the treaty parties whether the Senate intended the said five million dollars should include the cost of the removal of the Cherokees to the country west of the Mississippi, and the value of certain claims which certain Cherokees had against citizens of the United States, and it was agreed that this question should be referred to the Senate for its consideration, and if it was not intended that the sum of five million of dollars should include the said objects that such further provision should be made therefor as might appear to the Senate to be just. (Art. 2, supplementary articles to treaty of 1835, concluded March 1, 1836.)

It evidently was not intended by the Senate that the five million dollars should include the objects specified, inasmuch as by the third article of the supplementary articles to the treaty of 1835, duly ratified by that body, the sum of six hundred thousand dollars was allowed to the Cherokees to include the expense of their removal, and all claims of every nature and description not otherwise expressly provided for, said sum to be in lieu of reservations and pre-emptions, and of the sum of three hundred thousand dollars for spoliations described in the first article of the treaty of 1835.

The suggestion referred to in the second article of the supplementary treaty of 1835, (March 1, 1836), was made in the following communication, which was signed by Senator Cuthbert and others who voted for the ratification of the treaty. The treaty upon submission to the Senate, was ratified by only one majority. It is a reasonable inference, therefore, from this communication, that if the intent of the treaty had been understood to be that the cost of the removal was to be deducted from the Five Million Fund, it would not have been ratified in its then shape, but would have been amended to conform to the understanding expressed in this note to the President:

FEBRUARY 29, 1836.

We have no hesitation in stating it to be our impression, sir, that the Senate of the United States did not intend that the allowance for spoliations or the expenses of removal should be deducted from the amount of five millions recommended to be offered to the Cherokees as the price of their property. It is also our confident opinion that the Senate will readily add six hundred thousand dollars to the sum of five millions to meet these two expenditures.

With the greatest respect, etc.

To the PRESIDENT OF THE UNITED STATES.

The reasonable interpretation of the third article of the supplementary agreement of March 1, 1836, seems to be, therefore, that it was intended to exempt from the operation of the 15th article of the treaty of 1835, which provided that the various expenditures, allowances, and investments provided for in the several articles of the said treaty, should be deducted from the Five Million fund, the expense of removal, and the claims not otherwise expressly provided for. It apparently was the understanding of the Senate that this sum of six hundred thousand

dollars would fully cover the cost of removal and these additional claims, since it provided that any surplus which might remain should be turned over and belong to the educational fund. This expectation was evidently based upon and warranted by the schedule appended to a preliminary treaty, made March 14, 1835, between Agent J. F. Schermerhorn and a Cherokee delegation headed by John Ridge.[1] In this schedule, which shows the amount to be deducted from the Five Million fund for national funds, improvements, etc., appear the following items:—

For removals	$255. 000.
" claims & sploiations	250, 000.
Aggregating	505, 000.

It should be borne in mind that neither when this schedule was prepared, nor in December of the same year, when the treaty which was finally ratified was made, was the removal of the entire Cherokee people contemplated. Both treaties provided for the continued residence in the east, upon certain conditions, of Cherokees who were averse to removal. As finally ratified, the treaty of December required the removal of the entire nation, and by reason of the increased number of emigrants a larger sum than the estimate was provided.

The eighth article of the treaty of 1835 recites, "The United States also agree and stipulate to remove the Cherokees to their new homes, and to subsist them one year after their arrival there". This article was ratified without amendment. Under the agreement of submission it was competent for the Senate to declare that its intention was that the sum of five million dollars should cover all the expenditures consequent upon carrying out the provisions of the treaty, in which case the cost of removal and subsistence, as well as the other items specified, would necessarily have to be charged to, or deducted from, the five millions, as provided in the 15th article of the treaty of 1835.

The apparent conflict between the 8th and 15th articles is reasonably accounted for by the uncertainty respecting the decision of the Senate. If the Senate insisted upon the five million as the maximum sum to be paid, the 15th article would be fully operative; if, on the contrary, additional allowances were made for certain specific objects, such objects would be relieved from the operation of that article. The 8th article having been ratified without amendment, and the question submitted to the Senate in the 2nd article of the supplementary treaty having been answered substantially in the negative, by the further allowance of six hundred thousand dollars, " to include the expense of their removal," the conclusion seems unavoidable that the intention of the Senate was that the five million dollars allowance should not be charged with the expenses of removal. The same reasoning would apply equally to the cost of subsistence, and was subsequently adopted by the government, by the re-payment to the Cherokees of the amount expended for this purpose which had been charged to and deducted from the treaty fund.

Prior to the general migration of the Cherokee Nation in the late fall and winter of 1838, the sum of $600,000 appropriated by the supplementary articles of the treaty of 1835, had been practically exhausted. No further appropriation, however, would have been necessary if it had been the original understanding that the expense of removal and subsistence was to be charged to the treaty fund, there then remaining of

[1] H. R. Docs., Vol. 7, No. 286, p. 39, 24th Cong. 1st Session.

that fund more than sufficient to meet that expense. On the 12th of June, 1838, a further appropriation was made as follows:

In full of all objects specified in 3d article of supplementary articles of treaty of 1835 with Cherokees, and for the further object of aiding in subsistence of said Indians for one year after removal west; Provided, That no part of said money shall be deducted from the five millions stipulated to be paid said tribe by said treaty	$1,047,067.00

This appropriation was based upon the following estimate submitted by the Secretary of War to the Speaker of the House of Representatives, May 25, 1338:[1]

In compliance with the resolution of the House of Representatives of the 23d instant, requiring a statement of the amount that will be required for the additional allowance proposed to be made to the Cherokees, I have the honor to present the following estimate:

The payment of the expenses of removing the remaining Cherokees, estimated at 15,840, at $30 a head	$475,200.00	
Amount applicable to that purpose	39,300.00	
Balance to be provided for		435,900.00
If it should be deemed proper to make any further provision for the payment of the subsistence of the emigrants for one year after their arrival in the west, it will require, estimating the whole number at 18,335, thereby including those who have already emigrated, and allowing the amount stipulated to be paid by treaty, viz: $33.33 a head		611,167.00
		1,047,067.00

It is evident that the estimate of $30 per head as the cost of removal was not based upon full knowledge of the actual expense, since it appears that the expenditure per head for the removal of those who emigrated voluntarily, prior to the general movement of the nation under the conduct of John Ross, was $61.70; and no reason appears for the belief that future removals could be accomplished for a less sum.

The great bulk of the Cherokee Nation was averse to removal. The voluntary emigration covered a very small fraction of its people. A large majority of the tribe had been gathered in camps and were held under military guard, and preparations were being made for immediate removal under the escort of the United States troops. There was great danger of an outbreak, and it seemed probable that the attempt to complete the forcible removal would lead to open hostilities and perhaps involve a serious war.

Under these circumstances, having become convinced that ultimate removal was inevitable, Mr. John Ross submitted a proposition to General Scott, offering to undertake the removal at a cost of $65.88 per head.

General Scott considered the estimate too high and asked Mr. Ross to reconsider it. Upon a further examination, Mr. Ross replied to Gen. Scott that, so far from reducing the estimate, a slight increase would be necessary for furnishing certain articles which had been omitted from the original estimate. Gen. Scott, being under the impression that the cost of removal was to be paid from the treaty fund, acceded to the final proposition, and the removal was begun. The journey covered a distance of about 800 miles, and was based upon the assumption that it could be accomplished in 80 days. As a matter of fact the emigration occupied 125½ days on the average, and involved a cost of a fraction over $103.25 per head. It does not appear that the time occupied in the journey was unnecessarily extended by the parties having charge

[1] Vol. 10, Ex. Docs. No. 410, 25th Cong. 2nd Session.

of the emigration; on the contrary, it does appear, from the statement of Gen. Scott, that the season and the roads were exceedingly bad and the difficulty and cost of procuring provisions very great.

Under the voluntary emigration there had been complaints respecting the sufficiency and quality of rations and the facilities for transportation and the care of the sick, and it was the intention of Mr. Ross to furnish an extra number of wagons and additional care for the sick and infirm. It was also to be expected that an emigration conducted by Mr. Ross would occupy a longer time than if conducted under the escort of the United States troops. Even under the better conditions of the Ross emigration, so far as facilities were concerned, the process of removal was exceedingly tedious and disastrous, as is emphatically shown by the fact that there were over 600 deaths in the 12 detachments during the journey.

The total amount paid John Ross for the removal was $1,357,745.86. The first payments comprised the sum of $776,398.98, leaving an unpaid balance of $581,346.88. The payment of this sum was for some time refused, but finally, after a very lengthy correspondence and discussion and re-examination of the case, the amount was allowed by direction of President Tyler. It is to be borne in mind that if the emigration had been undertaken under the conduct of the United States Army it would not only have involved a very great expense for military escort, but the emigrants would necessarily have to be kept under very strict guard to avoid desertion. Even under the voluntary emigration the desertions ranged from 1 to 18 per cent, and it is questionable whether but for the agreement made with Mr. John Ross, the government would have been able to safely deliver a substantial portion of the Cherokee Nation in the Indian Territory. Under these circumstances, considering the difficulties arising from an inclement season, bad roads, snow and ice, the fact shown by the number of deaths, that a very large number of the emigrants were sick and infirm, it cannot reasonably be claimed that the expense of removal was seriously exaggerated, while, on the other hand, it seems clear from the history of the case, that the removal was accomplished with a much less expense to the United States than if it had been involuntary, under the direction of Gen. Scott.

It is unquestionably true that Mr. John Ross and his brother both realized a substantial profit from the contract for removal, but it no where appears that either they or the members of the Nation at large understood, or had any reason to understand, that the arrangement which had been made with the Secretary of War in the direct line of the several treaty provisions was to be carried out at the expense of the treaty fund and to be deducted from the per capita amount which had been promised in the various negotiations which preceded the final ratification of the treaty.[1]

THE UNDERSTANDING OF THE CHEROKEE NATION:

The Supreme Court of the United States, in their decision the case of Worcester *v.* The State of Georgia, say:

> The language used in treaties with Indians ought never to be construed to their prejudice. * * * How the words of the treaty were understood by this unlettered people (the Cherokees), rather than their actual meaning, should form the rule of construction. (6 Peters, p. 576).

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[1] For detailed account of the transactions leading up to the treaty of 1835, and the execution of its provisions, see Sen. Docs. Vol. 2, No. 120, 25th Cong. 2d Sess. & H. R. Docs. Vol. 5, No. 1098. 27th Cong. 2d Session.

The understanding of the Cherokee people respecting this question of removal is clear. It had been agitated for several years and many propositions looking to this end had been made to them, all, with one exception, contemplating the payment of the cost of removal and subsistence by the United States.

Under the treaty of 1817, the United States agreed to pay, and did pay, the expense of the removal of the Cherokees who emigrated under that treaty. The treaty of 1828, made with the Western Cherokees, contained the following provision:

ART. 8. And that their brothers yet remaining in the States may be induced to join them and enjoy the repose and blessings of such a State in the future, it is further agreed, on the part of the United States, that to each head of a Cherokee family now residing within the chartered limits of Georgia, or of either of the States, east of the Mississippi, who may desire to remove west, shall be given, on enrolling, himself for emigration, a good rifle, a Blanket, and Kettle, and five pounds of tobacco; (and to each member of his family one Blanket); also, a just compensation for the property he may abandon, to be assessed by persons to be appointed by the President of the United States. The cost of the emigration of all such shall also be borne by the United States, and good and suitable ways opened, and provisions procured for their comfort, accommodation, and support, by the way, and provisions for twelve months after their arrival at the Agency; and to each person, or head of a family, if he take along with him four persons, shall be paid immediately on his arriving at the Agency and reporting himself and his family, or followers, as emigrants and permanent settlers, in addition to the above, provided he and they shall have emigrated from within the Chartered limits of the State of Georgia, the sum of fifty dollars, and this sum in proportion to any greater or less number that may accompany him from within the aforesaid Chartered limits of the State of Georgia.

It seems to have been the opinion of the War Department as late an November 18, 1836,[1] that the above article was not superceded or annulled by the treaty of 1835. On that date Mr. Commissioner Harris wrote Maj. B. F. Currey, Indian Agent in the Cherokee country, as follows:

SIR:—I acknowledge the receipt of your letter of the 26th of Oct. last, and in reply, have to observe that I have taken the decision of the Secretary of War ad interim upon the claim of the Cherokees to commutation for subsistence, at $33.33 each. The Secretary decides that the commutation may be paid at the rate above stated; but at the same time declares that the allowance is made under the treaty of 1828, and not in pursuance of any stipulation of the final treaty of 1835.

The same opinion has been held in various reports to the Senate and House of Representatives from the Committees on Indian Affairs. Without quoting from them at length the following extract, from report dated February 19, 1847,[2] made to the Senate by Mr. Jarnigan, gives substantially the view which has been expressed in various forms in the reports referred to:

* * * * * * *

The sole consideration stated for the five millions was "their lands and possessions east of the Mississippi river." If anything else had been intended to be included, such as claims for spoliations, subsistence, removal, &c., why was it not so stated in the treaty? It is enough to show that it is not so stated; but it is manifest that such was not the intention of the parties; for the amount of these spoliations, the expense of removal, &c., were not then known, and could not have been ascertained; and besides, there were subsisting claims upon the Government of the United States, which they were bound by the treaty to have paid. Not to pay them, or to pay them out of the funds of the Cherokees which had been fixed by the Senate as the value of their lands, was precisely the same thing.

The United States were bound by the treaty of 1828 to pay the expenses of the removal of all the Cherokees. This obligation was not released by the purchase of their lands at their appraised value. Would such a thing be pretended in a similar transaction between individuals? If all the Cherokees had removed before they ceded their lands, the United States were bound to pay the cost of removal. If the

[1] Senate Docs., Vol. 2, No. 120, p. 209, 25th Cong. 2nd Session.
[2] Senate Docs., Vol. 3, No. 157, 29th Cong. 2nd Session.

United States afterward bought the lands of the Cherokees, they were bound to pay the price at which they were appraised. The first article of the treaty recites that "the Cherokee nation hereby cede to the United States their lands, east" &c. It will be seen by the above that subsistence and removal were not included in the above article, nor was any question as to either of those items then even thought of. But the only thing pretended to be charged upon this fund was spoliations. The Senate decided that the sum of $5,000,000 was given for the lands alone, and a supplemental article giving $600,000 was added to pay for spoliations and removal, but still not including subsistence. That sum it was then thought would be sufficient to cover these charges; but it was found that it was not; and the United States, feeling that they were bound to pay these charges, again, in 1838, appropriated $1,047,000 for these objects. Both of these sums, which were added by Congress, were found inadequate to pay these various charges and the fund of five millions has been used for that purpose and others, to its exhaustion, or nearly so. They ask to be relieved from the charges for removal and subsistence. It is very clear that not until after the exhaustion of the $6,000 and the $1,047,000 did the officers of the government of the United States ever once think that the $5,000,000 was liable for these charges. Not one dollar of that fund was ever so used until then.

The following communication[1] from the then Secretary of War shows that his understanding was, that this fund was not liable for these charges, or else he would not have made the requisition for the sum of $1,080,000, that is to say, $1,047,000 for these purposes, and $33,000 for annuities. Congress made the appropriation at once, which shows that the opinion of that body was the same. If the five million fund was liable for these charges, how could the Secretary have said that there were no funds to meet them, when there was the five million fund? Why did Congress make this additional appropriation? The only answer which can be given is, that it was considered just under the treaty, as the Senate had said, when the subject was a second time referred to that body for its decision on this specific question, that the treaty fund of five millions was not liable to be charged with these expenses.

* * * * * * *

The treaty fund was never touched, nor was it ever pretended that it was liable for these charges, until after the appropriation made for these specific objects had been exhausted. Now it seems very clear that if the government of the United States was liable for these charges when the additional sum of $600,000 was given, and then again when the further sum of $1,047,000 was given, it is equally liable now for whatever may remain of these charges, after both of these sums have been exhausted. The magnitude of the obligation cannot be held to release the party from its fulfillment.

* * * * * * *

The committee therefore report, and recommend the adoption of the following resolutions:[2]

Whereas, by the treaty of the 6th of August, 1846, between the United States and the Cherokee Indians, certain questions were ageed to be submitted to the decision of the Senate;

1. *Resolved,* That, in the opinion of the Senate, whatever balance of the fund of $5,000,000 stipulated to be paid to the Cherokee nation by the treaty of the 29th December, 1835, and the subsequent additions thereto, may now be ascertained to be due to the said Cherokee nation, shall bear an interest at the rate of five per cent. per annum from the time found due until the same be paid by the United States.

2. *Resolved,* That the charge for one year's subsistence of the Cherokees, after their arrival in the west, is not a proper charge upon the fund of $5,000,000 aforesaid, but should have been paid independently of that fund, by the United States.

3. *Resolved.* That the expense of removing the Cherokees to the west should, in like manner, have been borne by the United States, and not charged to the fund of $5,000,000 aforesaid.

4. *Resolved,* That the United States will pay to the Cherokee nation the sum of $10,000 for lands guarantied to the Cherokee nation by the treaty of Tellico, signed 25th October, 1805, and of which the said Cherokee nation was deprived by the authority of the State of Tennessee, and the further sum of $35,568 for the balance remaining unsold, by the United States, of a reservation of twelve miles square in Alabama, secured to the Cherokee nation by the treaty of 27th of Feberuary, 1819, being at the rate of 62 1–2 cents per acre

If the position taken in this report be correct, and the United States was bound, under the treaty of 1828, and notwithstanding the treaty of

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[1] See page 17.

[2] There was only 13 days remaining of the session, and no action appears to have been taken upon these resolutions.

1835, to remove the Cherokees to the Indian Territory, it effectually disposes of the question whether the cost of such removal was a proper charge against the treaty fund.

To return to the question of the understanding of the Cherokees respecting the treaty of 1835: Prior to the adoption of this treaty, strenuous efforts were made by the United States to secure the prompt removal to the western country of the Cherokee Nation, and various propositions were made to them looking to the conclusion of a treaty for that purpose.

In September, 1830,[1] Col. John Lowry made a proposition to them, in behalf of the United States, in which the United States agreed to remove the Cherokees and subsist them one year after their arrival west.

In April, 1832,[2] Mr. E. W. Chester, in the same behalf, made another proposition, under which the United States was to remove the Cherokees to their new country, and pay the expenses of such removal, and also to provide them with subsistence for one year after removal.

In September, 1832,[3] Gov. Lumpkin, of Georgia, in the same behalf, made the Cherokees a proposition substantially similar to that made by Mr. Chester.

In March, 1833,[4] a proposition was made to the Cherokees by the President, offering to pay them $2,500,000 in goods for their land, with the proviso that they should remove themselves, at their own expense, which proposition was rejected by the Cherokee Council.

June 19, 1834,[5] a treaty was made between John H. Eaton, on the part of the United States, and Andrew Ross, and others, on the part of the Cherokee Nation. This treaty was rejected by the Senate, the Cherokee Nation protesting against its ratification. In this treaty appears the following clause, respecting removal and subsistence:

> Fourthly. To cause emigrants to be carried to their homes, under the guidance of some faithful conductors, at the expense of the United States, and they are furthermore, to be furnished with the means of living for twelve months after their arrival.

The treaty of March 14, 1835, before referred to, was agreed upon at the city of Washington between J. F. Schermerhorn, on the part of the United States, and a delegation of the Cherokee Indians, which the President of the United States directed to be submitted to the Cherokee Nation for their consideration. Article 9, of this treaty, provided in part as follows:

> The United States also agree and stipulate to remove the Cherokees to their new homes, and to subsist them one year after arrival there, and that a sufficient number of steam boats and baggage-wagons shall be furnished them to remove them comfortably, and so as not to endanger their health; and that a physician well supplied with medicines, shall accompany each detachment of emigrants removed by the Government. They shall also be furnished with blankets, kettles, and rifles, as stipulated in the treaty of 1828. The blankets shall be delivered before their removal, and the kettles and rifles after their removal, in their new country. Such persons and families as, in the opinion of the emigrating agent, are capable of subsisting and removing themselves, shall be permitted to do so; and they shall be allowed in full for all claims for the same, twenty-five dollars for each member of the family, slaves excepted, for whom (those now owned in the nation) they shall be allowed eighteen dollars each; and in lieu of their one year's rations they shall be paid the sum of thirty-three dollars and thirty-three cents, if they prefer it. And, in order to encourage immediate removal, and with a view to benefitting the poorer class of their people, the United States agree and promise to pay each member of the Cherokee nation one hundred and fifty dollars on his removal, at the

[1] Indian Office files, letter-book No. 7, page 347.
[2] " " " " " " 8, " 297.
[3] " " " " " " 9, " 218.
[4] " " " " " " 10, " 18 & 110.
[5] H. R. Docs., Vol. 7, No. 286, p. 133, 24th Cong. 1st Session.

Cherokee agency west, provided they enrol and remove within one year from ratification of this treaty; and one hundred dollars to each person that removes within two years;

This treaty provided for the payment of $4,500,000 with an additional quantity of land west valued at $500,000, making a total payment of $5,000,000 from which the payments for removal, subsistence, improvements and ferries, and all other expenditures were to be deducted. Forming a part of article 18 is the following schedule, containing the estimate for carrying into effect the several stipulations of the treaty:

For Removal	$255, 000. 00
Subsistence	400, 000. 00
Improvements and ferries	1, 000, 000. 00
Claims and spoliations	250, 000. 00
Domestic animals	10, 000. 00
National debts	60. 000. 00
Public buildings	30, 000. 00
Printing press, etc	5, 000. 00
Blankets	36, 000. 00
Rifles	37, 000. 00
Kettles	7, 000. 00
Per capita allowance	1, 800, 000. 00
General Fund	400, 000. 00
School fund	160, 000. 00
Orphan's fund	50, 000. 00
Additional territory	500, 000. 00
	5, 000, 000. 00

This treaty was submitted to the Cherokee people at a general council at Red Clay on the 23rd day of October, 1835. A letter from President Jackson was read and translated to the council, in which he said:[1]

I shall in the course of a short time, appoint commissioners for the purpose of meeting the whole body of your people in council. They will explain to you, more fully, my views, and the nature of the stipulations which are offered to you.

These stipulations provide:

1st. For an addition to the country already assigned to you west of the Mississippi, and for the conveyance of the whole of it, by patent, in fee simple. And also for the security of the necessary political rights, and for preventing white persons from tresspassing upon you.

2d. For the payment of the full value to each individual of his possessions in Georgia, Alabama, North Carolina and Tennessee.

3d. For the removal, at the expense of the United States, of your whole people; for their subsistence for a year after their arrival in their new country, and for a gratuity of one hundred and fifty dollars to each person.

4th. For the usual supply of rifles, blankets and kettles.

5th. For the investment of the sum of four hundred thousand dollars, in order to secure a permanent annuity.

6th. For adequate provision for schools, agricultural instruments, domestic animals, missionary establishments, the support of orphans, etc.

7th. For the payment of claims.

8th. For granting pensions to such of your people as have been disabled in the service of the United States.

These are the general provisions contained in the arrangement. But there are many other details favorable to you which I do not stop here to enumerate, as they will be placed before you in the arrangement itself. Their total amount is four millions five hundred thousand dollars, which, added to the sum of five hundred thousand dollars, estimated as the value of the additional land granted you, makes five millions of dollars; a sum, which, if equally divided among all your people east of the Mississippi,—estimating them at ten thousand, which I believe is their full number, would give five hundred dollars to every man, woman and child in your nation. There are few separate communities, whose property, if divided, would give to the persons composing them such an amount.

[1] H. R. Docs., Vol. 7, No. 286, page 41, 24th Cong. 1st session.

Mr. Schermerhorn also said, respecting the pecuniary benefits to result from this treaty,[1] after reciting the smaller advantages:

> The United States will also pay $150 per head to every Cherokee who enrolls and removes the first year, and $100 to those who remove the second year after the ratification of the treaty; but no pay of this kind will be made to those who remove after two years. This is truly a provision for the poor of the Nation. The wealth of the rich men consists in their lands, improvements and negroes, but the poor men's riches are his women and children. A poor man, if he has ten children, if he removes the first year, will get when he arrives at the west of the Mississippi, $1,500; and the same proportion if his family are larger or smaller.

It is to be noted that both President Jackson and the agent, Mr. Schermerhorn, lay great stress upon the amount to be paid to the individual Cherokees under the per capita division of the residuum of the treaty fund. The amount to be divided, as shown by the schedule, was $1,800,000. It was this consideration which induced the Cherokees to consent to removal. But for the promise that they should receive, and the expectation of receiving, a substantial sum in money, they would not have accepted the treaty of 1835, and their removal could have been accomplished only by military force, and at great expense. It is plain that neither President, agent, nor Cherokees could have contemplated that a larger sum than shown in the schedule should be deducted from the Five Million Fund, inasmuch as a greater deduction would have rendered impossible such a per capita allowance as was promised by the representatives of the United States and expected by the tribe.

This preliminary treaty failed of ratification, and the final treaty of December 29, 1835, was made, substantially upon the basis of the former treaty, but containing the submission to the Senate, whether removal and spoliations were included in the Five Million Fund, which was answered by the additional appropriations of six hundred thousand dollars to cover the two items which had been specifically objected to in the discussion of the former treaty, and the inclusion of which had caused its rejection by the Cherokee council.

Under the treaty of 1835, enrollment books for voluntary emigration were opened in the then Cherokee Country. Instructions as to the nature of the enrollment were sent by Acting Secretary of War, C. A. Harris, to Lieut. J. Van Horne, U. S. A., dated September 12, 1837, in part as follows:

> Enrolling books must be prepared on the following plan: A memorandum, or entry, must be inserted, purporting that the subscribers assent to a treaty with the United States upon the terms heretofore offered by the President to their people. And that if no treaty should be made during the next fall, or early in the winter, then the subscribers will cede to the United States all their right and interest in Cherokee lands east of the Mississippi, upon the following conditions: that they shall receive, so fast as Congress shall make the necessary appropriations, the ascertained value of their improvements, on their arrival west; that they shall be removed and subsisted for one year at the expense of the United States; that they shall be entitled to all such stipulations as may be hereafter made in favor of those who do not now remove, excepting so far as such stipulations may depend on the cession of rights or improvements, for which the subscribers have been previously allowed a compensation; that they shall have their full share of the three years annuity, now remaining unpaid and that they shall also be entitled to their just proportion of the Cherokee school reservation under the treaty of 1819.

Here again appears the statement "that they shall be removed and subsisted for one year at the expense of the United States." Up to this time it had been the practice of the government to pay the cost of removal and subsistence for one year, when transferring tribes from the east to the west. The Chickasaws, Choctaws, Creeks and Seminoles

[1] Senate Docs., Vol. 2, No. 120, page 458, 25th Congress, 1st session.

were all removed upon these terms, and there was no reason why a different rule should govern the removal of the Cherokees. All of these tribes were neighbors of the Cherokees, who were generally informed of the circumstances and terms of their removal.

Still, further, on the 18th day of May, 1838,[1] Mr. Poinsett, then Secretary of War, in writing to Mr. John Ross respecting the removal, said:

> If it be desired by the Cherokee Nation, that their own agents should have charge of their emigration, their wishes will be complied with, and instructions be given to the commanding general in the Cherokee country to enter into arrangements with them to that effect. With regard to the expense of this operation which you ask may be defrayed by the United States, in the opinion of the undersigned, the request ought to be granted, and an application for such further sum as may be required for this purpose shall be made of Congress.

And, also, under date of June 1, 1838,[2] in explaining to General Scott, then in command in the Cherokee country, why the negotiation for the Ross removal had not been effected through him, said:

> No new treaty has been made, nor propositions for a treaty entertained; but it is proposed to make such allowances to the Cherokees as it is believed were intended originally by the Senate.

The understanding of this treaty by the treaty party, with whom it was made, is shown by the following statement contained in their memorial to the United States government, dated April 13, 1844.[3] It will be observed that the amount to be distributed per capita is increased over that contained in the schedule forming a part of the preliminary treaty by reason of the additional appropriations of $600,000 and $1,047,067, but not by the aggregate of those sums, as the items to be deducted are also increased. This statement is here included merely to show the general understanding which the parties to the treaty had respecting the individual benefits to be derived from the per capita division of a very large sum:

> The number of persons of the Cherokee Nation, according to the census of 1835, including whites and blacks and North Carolina Indians, was 16,743. Thus at $20 per head, the United States would be entitled to a credit of $334,860 for removal. For subsistence $558,044.18.
>
> The account current will therefore stand thus:
>
> *The United States in account with the Cherokees, under the treaty of 1835.*
>
> DR.

To this amount appropriated under the 1st article of the treaty including amount retained for land	$5,000,000.00
This amount appropriated under the 3d supplemental article of the treaty	600,000.00
This amount of additional appropriation for objects specified under the 3d supplemental article, and for subsistence	1,047,067.00
Total	6,647,067.00

[1] Indian Office files, letter-book No. 24, page 222.
[2] H. R. Docs., Vol. 11, No. 453, p. 3, 25th Cong. 2nd Session.
[3] H. R. Docs., Vol. 5, No. 234, 28th Cong., 1st Session.

The United States in account with the Cherokees, under the treaty of 1835—Continued.

CR.

By this amount paid for improvements under the 9th article of the treaty	$1,647,917.33	
This amount paid for spoliations under the 9th article and 3d supplemental art. of the treaty	570,511.67	
This amount allowed for removal, estimating numbers according to census of 1835, at $20 each	334,860.00	
This amount allowed for subsistence upon the same basis, at $33.33 each	558,044.00	
This amount paid for debts of the Cherokee Nation, as per 10th art.	60,000.00	
This amount paid for lands not appropriated, but withheld	500,000.00	
Pd. for national funds, 10th art. $200,000		
Pd. for education " " " 150,000		
pd. for orphan's " " " 50,000		
	400,000.00	
Added to education fund, 4th supplemental article	100,000.00	
		$4,171,333.00
Leaving a balance against the United States		2,475,734.00
Or $147.86 each.		

The "application for such further sum as may be required for this purpose" was made to Congress, and in response thereto the appropriation of $1,047,067 was made. The cost of removal and subsistence proved to be very much larger than was anticipated and provided for in this appropriation. The excess of cost of subsistence over the amount appropriated has been refunded to the Cherokee Nation; but upon the assumption that the United States was to pay the expense of removal there is due the Cherokee fund the sum of $1,111,284.70, as per the following statement:

Total expense of removal and subsistence		$2,952,196.26
To which the United States contributed the difference between the amount actually paid for spoliations ($264,894.09) and $600,000 appropriated July 2, 1836	$335,105.91	
Amount appropriated by act of June 12, 1838	1,047,067.00	
Amount appropriated by Act of September 30, 1850	189,422.76	
Part of amount appropriated by act of February 27, 1851, being sums paid to agents of the United States, originally charged to treaty fund and then reimbursed	99,999.42	
		1,668,595.09
Charged to treaty fund		1,283,601.17
Of which there was expended for subsistence, after the expiration of one year, properly chargeable to the Cherokee fund		172,316.47
Leaving balance due the Cherokee Nation		1,111,284.70

Eliminating wholly from the account the appropriations for, and the expenditures on account of, removal and subsistence, and deducting

from the $5,000,000 fund the items properly chargeable thereto, the statement would be as follows:

Due to Cherokee Nation for lands and possessions east of Mississippi river		$5,000,000.00
Appropriated for spoliations by supplemental treaty Mar. 1st, 1836, being so much of $600,000 as actually paid for this purpose		264,894.09
		5,264,894.09
Deduct:		
For spoliations	$264,894.09	
For improvements	1,540,572.27	
For ferries	159,572.12	
For debts and claims upon the Cherokee Nation	101,348.31	
For the additional quantity of land ceded to the Nation	500,000.00	
For amount invested as the general fund of the nation	500,880.00	
For subsistence furnished after expiration of one year under agreement that it should be charged to treaty fund	172,316.47	
		3,239,583.26
		2,025,310.83
Per capita distribution		914,026.13
Leaving balance due as shown on preceding page		1,111,284.70

The above amounts of expenditure are taken from a joint report of the Second Auditor and Second Comptroller, made December 3, 1849,[1] in accordance with a resolution of Congress, passed August 7, 1848.[2] The vouchers covering these disbursements were again carefully examined and a report made in 1884, by Mr. Jesse Arnold, of the Second Auditor's office, for the use of the Court of Claims in the suit of the Western Cherokees against the United States. The result of the examination of over 30,000 vouchers was an exact confirmation of the report of 1849.

Although under the treaty of 1835, the removal of the Cherokee nation was practically completed in 1838, no steps were taken for several years looking to carrying out the provisions of the treaty. Meantime the nation was divided into three branches, the "Old Settler" or Western Cherokees, comprising those who had emigrated under the treaties of 1817 and 1819; the treaty party composed of a small proportion of the nation who had been parties to the treaty of 1835 and who had removed themselves or been removed by the government prior to 1837–8, and, lastly, the government or Ross party, comprising the great majority of the nation who had repudiated the treaty of 1835, but had finally yielded to the necessities of the situation so far as to remove under the direction of John Ross. Each of these three parties had a grievance, and each was opposed to both of the others, for reasons growing out of its particular relations to the making and execution of the treaty. The Old Settlers were aggrieved because, having by the cession of their lands in Arkansas acquired an exclusive right to the lands of the Indian Territory, there was precipitated upon them a great number of Eastern Cherokees, comprising both the treaty and government parties, without any provision being made for compensation to them for the restricted use of the western territory.

[1] Sen. Ex. Doc. Vol. 6, 31st Cong. 1st Session.
[2] U. S. Statutes at Large, Vol. 9, No. 6, page 339.

consequent upon such an access of population. The treaty party felt aggrieved because after having made the treaty with the United States government, the United States had practically withdrawn its support from them by reason of which they were subjected to harsh and vindictive legislation by the government party, which, upon its arrival in the western territory, by sheer force of numbers, assumed to control and did control the affairs of the entire Cherokee Nation.

The government party continued to regard its forced removal as an injustice and hardship, and this feeling was aggravated by the failure of the government of the United States to carry out the provisions of the treaty of 1835. Under these circumstances the nation was in a condition of continuous ferment; several of the leading men of the government party and the treaty party were murdered, and it was contemplated by the latter branch of the nation to remove wholly without the limits of the Indian Territory. Finally, with a view to preserving harmony, delegations representing the three branches were brought to Washington, and the result of protracted negotiations and numerous conversations with the different delegations was that the treaty of August 6, 1846,[1] was finally concluded.

It provided for an examination and payment to each section of the nation of its just claims arising out of the treaty of 1835, and the collateral circumstances connected therewith. Under article 3, it was provided that certain claims which had been allowed by the several boards of commissioners appointed under the treaty of 1835 to estimate the value of improvements, spoliations, etc., which had been charged to those items under the names of rents and dispossessions and reservations, should be reimbursed to the treaty fund.

These amounts, as will presently appear, were fully restored to the treaty fund, and there is consequently no just claim against the United States by reason of the charges alluded to in the 3rd article. The same article provided further that the expenses of making the treaty of New Echota, which it states were also paid out of the fund, should likewise be reimbursed. This statement was an error. The expense of making the treaty of New Echota, amounting to $37,212, was paid by direct appropriation made July 2, 1836, and was never charged to the national fund.

Article 4, of the treaty of 1846, provided for a settlement with the Old Settlers or Western Cherokees, and, under this article, there was paid to them, practically as a consideration for the lands which were occupied by the Eastern Cherokees on their migration to the west, but nominally as one-third of the residuum of the treaty fund, based upon the assumption that the Western Cherokees comprised one-third of the entire nation, the sum of $532,896.90.[2] Still later, as has been stated, the Western Cherokees were authorized[3] to bring a suit for additional claims in the Court of Claims, under which adjudication an additional sum of $224,972.68, with interest, and an allowance of $4,179.26, being the value of certain lands in Arkansas, was awarded them, the total award amounting to $830,578.64. The sum of $224,972.68 was reduced by the Supreme Court to $212,376.94, and the judgment affirmed.[4]

Under the 6th article it was provided that $115,000 should be paid

[1] U. S. Statutes at Large, Vol. 9, page 871.
[2] Act of Sept. 30, 1850, making appropriation for Indian Dept.
[3] Act of Feby. 25, 1889, 25th Stats. page 694.
[4] U. S. Reports 148, page 427.

the treaty party by reason of their losses and expenses incurred in consequence of the treaty of 1835, of which $5,000 was paid to the heirs of Major Ridge; $5,000 to the heirs of John Ridge; $5,000 to the heirs of Elias Boudinot, $25,000 to the delegation representing the treaty party in making the treaty of 1846, the balance of $75,000 to be distributed among the individual members of the treaty party. This amount of $115,000 was appropriated by the act of March 1, 1847, and was duly distributed to those entitled to share in the distribution.

Article 9 of this treaty provides for a settlement of the claims of the nation arising out of the distributions under the treaty of 1835, and is as follows:

ARTICLE IX. The United States agree to make a fair and just settlement of all moneys due to the Cherokees, and subject to the per capita division under the treaty of 29th December, 1835, which said settlement shall exhibit all money properly expended under said treaty and shall embrace all sums paid for improvements, ferries, spoliations removal, and subsistence, and commutation therefor, debts and claims upon the Cherokee nation of Indians, for the additional quantity of land ceded to said nation; and the several sums provided in the several articles of the treaty to be invested as the general funds of the nation and, also, all sums which may be hereafter properly allowed and paid under the provisions of the treaty of 1835. The aggregate of which said several sums shall be deducted from the sum of $6,647,067, and the balance thus found to be due shall be paid over per capita, in equal amounts, to all those individuals, heads of families, or their legal representatives, entitled to receive the same under the treaty of 1835, and the supplement of 1836, being all those Cherokees residing east at the date of said treaty and the supplement thereto.

This article provides substantially, as will be seen, for a settlement with the Cherokee Nation upon the basis of the treaty of 1835, and for the deduction from the sum of $6,647,067 of the charges properly to be made against it under the terms of that treaty, and the distribution per capita of the residuum. It is evident from the use of the word "properly" in this section that it was not the intention to increase or enlarge the deductions which were to be made from the treaty fund, either in numbers or in character. Whatever was properly chargeable under the 15th article of the treaty of 1835, was also chargeable under the 9th article of the treaty of 1846, but nothing more. In pursuance of this article a resolution was passed by Congress on August 7, 1848, instructing the proper accounting officers of the Treasury to render a statement of the balance found due the Cherokee Nation, which was transmitted to Congress December 3, 1849, and was as follows:

For improvements		$1,540,572.27
" ferries		159,572.12
" spoliations		264,894.09
" removal and subsistence and commutation therefor, including $2,765.84 expended for goods for the poorer Cherokees, under the 15th art. of treaty of 1835, as follows:		
Removal, subsistence & commutation	$2,823,192.93	
Physicians, matrons, medicines hospital stores, etc	32,003.91	
Superintendents, clerks, interpreters, disbursing, issuing and enrolling agents, conductors and contingencies	99,999.42	
		2,952,196.26
For debts and claims upon the Cherokee Nation:		
National debts (10th Art.)	18,062.06	
Claims of U. S. citizens (10th Art.)	61,073.49	
Cherokee Committee (12th Art.)	22,212.76	
		101,348.31
For the additional quantity of land ceded to the nation		500,000.00
For amount invested as the general fund of the nation		500,880.00
		6,019,463.05

Appropriation July 2, 1836	$5,000,000.00	
" " " "	600,000.00	
" June 12, 1838	1,047,067.00	
		$6,647,067.00
Deducting above amount		6,019,463.05
Gives balance found due by Second Auditor and Second Comptroller		627,603.95

The sum of $96,999.42 shown in the above account was considered by Congress not to be a proper charge against the $6,647,067, and was appropriated and restored to the said fund by the Act of February 27, 1851.[1]

In the total amount of $2,952,196.26, for removal, subsistence, etc., there was included the amount of $189,422.76, which was the sum paid for subsistence in excess of the amount appropriated by the act of June 12, 1838, for this specific purpose. This amount was also considered an improper charge against the treaty funds, and was appropriated and restored to the said funds by act of September 30, 1850.[2]

The total amount for distribution per capita, therefore, was:[3]

Amount found due by Treasury officials		$627,603.95
Additional appropriations by Congress, as above		96,999.42
Making total sum for per capita distribution		914,026.13
Of this sum there was sent to John Drennan, Superintendent of Indian Affairs, for distribution to the Eastern Cherokees, then in the west, from the appropriation of September 30, 1850	$164,523.66	
And to Alfred Chapman, for distribution to the Cherokees still remaining in the east but entitled to participate in the distribution	24,627.58	
		189,151.24
And of the sum of 724,603.37 appropriated by act of February 27, 1851, there was remitted to Mr. Drennan for the same purpose as the former remittance to him	629,379.47	
And to Mr. Chapman for the same as prior remittance to him	95,223.90	
		724,603.37
There was retained on account of payments already made to individual Cherokees (exclusive of interest, which amounted to $170.61)		271.52
A total disbursement of		914,026.13
There was also distributed as interest upon the above sums:		
Upon the sum paid by Superintendent Drennan		514,459.02
And upon the sum distributed by Mr. Chapman		77,683.02
Total per capita distribution		1,506,168.17
Add interest item, as above		170.61
Total principal and interest appropriated		1,506,338.78

The total number of Cherokees participating in this distribution was 16,231, of whom 14,098 were Cherokees in the west and 2,133 remained east. The per capita amount was $9279.

Figuring upon the basis stated in the 9th article of the treaty of 1846, and following the Auditor's and Comptroller's figures in the accounting of December 3, 1849, and eliminating from the charges made against the total fund of $6,647,067, the excess of payments over

[1] U. S. Statutes at Large, Vol. 14, page 572.
[2] U. S. Statutes at Large, Vol. 14, page 556.
[3] Indian Office files, Ledger No. 9, pages 177 and 199.

the amounts appropriated by the United States for that purpose, the true statement of the accounts is as follows:

For improvements		$1,540,572.27
" ferries		159,572.12
" spoliations		264,894.09
" removal and subsistence, being the amount actually provided and expended for these purposes, and consisting of the following items	$335,105.91 1,047,067.00	1,382,172.91
For debts and claims upon the Cherokee Nation		101,348.31
For the additional quantity of land ceded to the nation		500,000.00
For amount invested as the general fund of the nation		500,880.00
For subsistence furnished after expiration of one year under agreement that it should be charged to treaty fund		172,316.47
		4,621,756.17
For lands and possessions		5,000,000.00
" spoliations		264,894.09
Balance of $600,000 applicable to removal		335,105.91
Appropriation June 12, 1838		1,047,067.00
		6,647,067.00
From which deduct charges as above		4,621,756.17
Balance to be distributed per capita		2,025,310.83
Deduct amount actually distributed, as already explained		914,026.13
Balance due		1,111,284.70

Under article 8 of the treaty of 1846, the sum of $20,000 was also appropriated in lieu of all claims of the Cherokee Nation, as a nation, prior to the treaty of 1835, except all lands reserved by the treaties heretofore made for school funds. This amount was appropriated by act of March 1, 1847, and was duly paid to the Cherokee nation. The several appropriations which have been made cover the liability of the United States to the Cherokee Nation under the treaty of 1846, treating the above sum of $1,111,284.70 as arising under the treaty of 1835.

TREATIES OF 1866 & 1868.

The treaty of 1866[1] grew out of the fact that the nation had been divided during the war and until the time of making the said treaty. The great majority of the Cherokee Nation was loyal, but a substantial percentage sympathized with the Confederacy and furnished troops to the Confederate cause. The country had been over-run by both Federal and Confederate troops, and the improvements which existed at the beginning of the war had practically been wiped out of existence. The Cherokee Nation was, therefore, in an exceedingly impoverished condition while the feuds growing out of the war still continued.

The object of the treaty was to harmonize the differences between the northern and southern sympathizing elements, and also to restore the tribe to its former condition. It provided for general amnesty; for the repeal of certain confiscation laws which had been directed against that section of the tribe which had allied itself with the Confederacy; for the freedom of the slaves and for the reorganization of the government.

Under article 15, it was provided that the United States might settle any civilized Indians, friendly with the Cherokees and adjacent tribes within the Cherokee country, on the unoccupied lands east of the 96th meridian west longitude. Any tribe so settled, not retaining its tribal

[1] U. S. Statutes at Large, Vol. 14, page 799.

organization, was required to pay into the Cherokee national fund a sum of money, bearing the proportion to the national fund which the number of the tribe so settled bore to the entire number of the Cherokee Nation. If the tribe so settled east of the 96th meridian desired to preserve its tribal organization, it was to contribute in like manner to the national fund, and, in addition, pay for the lands allotted to it, at a price to be agreed upon between such tribe and the Cherokees, the President of the United States having the right to fix a price in case of disagreement.

Under article 16, the United States had the privilege of settling friendly Indians in any part of the Cherokee Country west of the 96th meridian, and to allot such tribes a quantity of land not exceeding 160 acres to each person, to be paid for at an agreed price, subject to the decision of the President, as before stated, in case of disagreement.

By article 17, the Cherokee Nation ceded in trust to the United States, the tract of land in the State of Kansas which had been ceded to it by the treaty of December 29, 1835, known as the "neutral" lands, and shown upon the second map appended hereto; also a strip of land within the State of Kansas, shown upon the same map and marked "Cherokee Strip." These lands were to be surveyed and sold in the same manner as the public lands of the United States are sold, and the proceeds distributed among the General, School, and Orphan funds of the Nation, in the proportion of 50, 35, and 15 per cent respectively. The Secretary of the Interior was authorized to pay the drafts of the nation to an amount not to exceed $150,000, out of the funds belonging to the nation.

Under article 29, as amended, the Secretary of the Interior was also authorized to pay the reasonable cost and expenses of the delegates who made the treaty, such payments to be reimbursed out of the proceeds of the sales of the "neutral" lands in Kansas.

These provisions cover the treaty of 1866, so far as it comes within the scope of this accounting between the United States and the Cherokee Nation.

The treaty of 1868[1] was practically an addition or supplement to the treaty of 1866, whereby the Cherokee Nation ratified an agreement which had been entered into by the Secretary of the Interior and Mr. James F. Joy, for the purchase by the latter of the entire unoccupied portion of the "neutral" lands, and for the method of payment.

Under the treaty of 1866, by virtue of an agreement made between the Delawares and Cherokees, dated April 8, 1867, the former nation was located in the Cherokee country east of the 96th meridian, and became incorporated with the Cherokee Nation. The number of Delawares was 985, and the Cherokees 13,573, and the ratio which one bore to the other was one to thirteen seventy-eight one hundredths, which ratio formed the basis upon which was determined the amount to be paid to the Cherokees by the Delawares for an equal interest in the national fund of the Cherokees, viz: $678,000 and $1,000,000, the estimated value of the neutral lands ceded by the 17th article of the Cherokee treaty of July 19, 1866.

The amount of land purchased by the Delawares from the Cherokees, under their agreement, was 157,600 acres, which, at $1.00 per acre, aggregated the sum of $157,600, and the amount paid to the Cherokee Nation for an interest in national funds, $121,824.28 aggregating the sum of $279,424.28.

[1] U. S. Statutes at Large, Vol. 16, page 727.

The funds transferred were as follows, viz:

Amount of nonpaying bonds of several southern States, transferred at par as per agreement	$32,000.00
Amount of paying stocks of the State of Missouri	2,000.00
U. S. bonds issued to Union Pacific R. Co: Eastern Division, transferred at market rate, $1.06⅜	245,424.28
Total	279,424.28

These funds were transferred to the credit of the Cherokees, May 13, 1869.

Under the same treaty a tract of land west of the 96th meridian, and extending as far as the Arkansas river, was sold to the Osage and Kansas Indians, the respective tracts occupied by each being shown upon the accompanying map and marked numbers 1 and 2. The amount received by the Cherokee Nation and the disposition thereof, is shown in the following statement:

To amount transferred from sales of Osage lands, in payment for 1,566,784 acres of land purchased by the Osages, per act of March 3, 1873	$1,096,748.80
By amount set apart for the benefit of an orphan institution per act of February 14, 1873	20,000.00
By amount set apart for the establishment of a literary institution, per act of Feb. 14, 1873	75,000.00
By amount set apart and invested in United States stocks for the orphan fund, per act of February 14, 1873	80,000.00
Per capita distribution, act March 3, 1875	200,000.00
By balance at interest 5 per centum per annum	721,748.80
	1,096,748.80

$80,000 of the above funds were invested in United States stocks, the face value of which is $71,505.41, and the same were added to the orphan fund, per act of February 14, 1873. The $95,000 set apart by the Act of February 14, 1873, for the benefit of an orphan institution and the establishment of a literary institution was remitted to John B. Jones, Indian Agent, on the 27th of April 1874.

In like manner, under the same treaty, the Shawnee Indians were incorporated with the Cherokee Nation, under an agreement between the Shawnees and Cherokees, dated June 7, 1869. There were transferred from the Shawnee to the Cherokee funds, as part consideration of the agreement, bonds amounting to $44,726.62, which the Cherokees agreed to receive at their original cost, $50,000. There were also transferred to the Cherokees the following Shawnee treaty funds:

Permanent annuity for educational purposes, under treaty of August 3, 1795	$1,000.00
Permanent annuity for educational purposes, under treaty of September 29, 1817	2,000.00
Interest on $40,000 for educational purposes, under treaties of August 3, 1795 and May 10, 1854	2,000.00
	5,000.00

The cash value of these annuities, carrying interest at 5% is $100,000, and the interest has since been annually appropriated and paid to the Cherokee Nation. The principal sum of $100,000 has not been added to the Cherokee funds and remains simply as a paper credit. There seems to be no good reason why this fund should be treated differently from the other funds belonging to the Cherokee Nation, and it is, therefore, found that under this agreement, and treaty of 1866, the Cherokee Nation is entitled to have carried to its credit upon the books of the Treasury the sum of $100,000.

In like manner the Ponca Indians were located west of the Arkansas river, upon the tract shown in the accompanying map and marked No. 4, the consideration being $48,389.46, which sum is included in the amount held in trust by the United States for the Cherokees in lieu of investment, bearing interest at the rate of 5% per annum.

Under the same treaty, the Nez Perces, Otoes & Missourias, and Pawnees were located upon the tracts shown upon the accompanying map, marked Nos. 3, 5 and 6 respectively. The consideration for this land consisted in an appropriation of $300,000 under act of March 3, 1883, to pay the Cherokee Nation for the lands west of the Arkansas river, which sum was to be expended as the acts of the Cherokee legislature directed; provided, that the Cherokee Nation, through its proper authorities, should execute conveyances satisfactory to the Secretary of the Interior to the United States in trust only for the benefit of the Pawnees, Poncas, Nez Perces, and Otoes & Missourias and Osages now occupying said tracts as they respectively occupied the same before the payment of the said sum of money. This $300,000 was deducted from the price paid for the Cherokee Outlet under the articles of the agreement concerning the cession of the Cherokee Outlet, made at Tahlequah, in the Indian Territory, on the 19th of December, A. D., 1891, as were also accounted for the appropriation of $300,000, made by the act of June 16, 1880: the amount paid for the lands assigned to the Poncas, appropriated by the Act of March 3, 1881, and $75,000 appropriated October 19, 1888, to pay certain freedmen and Delaware and Shawnee Indians their proportion of the amount appropriated by the Act of March 3, 1883, before mentioned.

The agreement of December 19, 1891, does not contemplate an examination of any indebtedness or accounts arising under any treaty or agreement subsequent to 1868, and it is sufficient to state that these several sums were advanced to the Cherokee Nation and charged against the proceeds of the sale of the Cherokee Outlet, which is shown upon the accompanying map and described as "Cherokee Outlet" and were accounted for in the transaction concluded by the purchase of the Outlet under the provisions of the act of March 3, 1893.

The territory known as the "neutral lands" was surveyed and sold according to the treaty provisions, and the receipts and disposition of the net proceeds are shown by the following statement:

Sale of Neutral Lands—Treaty of July 19, 1866:	
Gross proceeds, including interest on deferred payments, and premium on sale of coin	$985,296.96
Expenses of negotiating treaty of 1866, of survey and sale, and of Cherokee delegation	85,461.78
Net proceeds	899,835.18
Disposition of net proceeds:	
Amount used in payment of national warrants	33,860.12
Interest carried to the credit of the interest accounts of the National, School and Orphan funds	47,627.27
Amount invested in $740,941.77 United States stocks	818,347.79
Total	899,835.18

A printed statement showing in detail the receipts and disbursements on account of the sales of these lands, was furnished Mr. D. W. Bushyhead, Treasurer of the Cherokee Nation, by the Commissioner of Indian Affairs, at the request of Mr. Bushyhead, of date May 15, 1874.

The receipts and disbursements of the net proceeds of the sales of the Cherokee Strip are shown in the following statement:

Sale of Cherokee Strip—Treaty of July 19, 1866, and act of Congress of May 11, 1872:	
Gross proceeds, including interest on deferred payments	$560,361.94
Expenses of survey and sale	22,479.71
Net preceeds	537,882.23
Disposition of net proceeds:	
Amount invested in $67,675.27 United States stocks, for the benefit of the Cherokee Asylum, Act of Feby. 14, 1873, (17 Stats. p. 462)	75,000.00
Amount used for the establishment of an Asylum, Act of Feby. 14, 1873	25,000.00
Amount invested in $30,920.49 for the National, School and Orphan funds	35,890.25
Amount used in the payments of National warrants	8,275.11
Amount paid W. A. Phillips, Attorney	6,984.38
Amount remitted to the Nation, through the U. S. Indian Agent and its National Treasurer	386,300.21
Balance due the Nation	432.28
Total	537,882.23

The last item of this statement, "balance due the nation, $432.28," was the balance of the amount received by the Receiver of Public Moneys at Independence, Kansas, in the 4th quarter of 1873, and has never been accounted for by him, and is due the Cherokee Nation, with interest from January 1, 1874, at the rate of 5% per annum.

These several sums comprise all the moneys accruing to the Cherokee Nation under the treaties of 1866 and 1868, and have been properly paid, except as above noted.

Under the treaty of 1835, and the supplement of 1836. it was provided that $300,000 should be set apart as a permanent national fund, $150,000 as a school fund (to which was to be added the amounts received from the sale of the Alabama and Tennessee school lands), and $50,000 as an Orphan fund, and that the annuity of $10,000 should be commuted for the sum of $214,000. These sums amounted to $714,000, and were invested in bonds aggregating $708,761.39. The $52,490, arising from the sale of the Alabama school lands, was likewise invested, the bonds purchased aggregating $51,138, making a total invested fund of $759,899.39.

The additions and deductions to the several funds into which this total amount was divided, together with the receipts and disbursements of interest thereon, are shown with great fidelity of detail in the Indian Office Trust Fund Ledgers, Nos. 1, 2, & 3. As a part of this examination, these accounts have been carefully and exhaustively compared and balanced, and it has been found, both with respect to principal and interest, that the funds have been faithfully administered and that no improper charges have been made against them.

In 1874, at the request of Mr. Bushyhead, the then Treasurer of the Cherokee Nation, a detailed statement of the trust fund account down to May of that year, was rendered to him to enable him to open a proper set of accounts with the United States. The several bond transactions since that time have been printed in detail in the annual reports of the Commissioner of Indian Affairs, which comprise statements of the changes made in the securities, the profit or loss involved in the change, the sources from which the additions to the funds were derived, and the interest due thereupon. Inasmuch as these statements are in print and accessible, it has not been considered desirable to extend them in this

report, as it would be mere repetition of transactions of which the Cherokee Nation has full knowledge.

No deduction has been made from the capital of the nation or from the invested fund of the nation with the exception of the years 1867, 1869, 1871 and 1873, when, in accordance with the 23d article of the treaty of 1866, authorizing the Secretary of the Interior to dispose of securities sufficient to realize an amount not exceeding $150,000 for the payment of the debts of the Cherokee Nation, there were sold in 1867, $89,700 of bonds, realizing $90,914.02 and in 1869, $15,000, realizing $16,581.25; in 1871, $3,200, realizing $3,552, and in 1873, $600, realizing $664.50.

The difference between these amounts and the $150,000 amounting to $38,288.23, was derived from the sale of the neutral and strip lands. The only other deduction from the fund, consisting of an interest item on $15,000 taken from the Choctaw fund and expended for the Cherokees, will be further alluded to hereafter.

The following statement shows the several funds of the Cherokee Nation, and the annual interest thereupon, at the date of this report:

Statement of stocks and funds held in trust by the United States for the Cherokee Nation:[1]

Funds.	Treaty or act.	Stocks.	Funds in lieu of investment.	Total.	Annual interest.
National	Dec. 29/35 Apl. 1/80	[2]$602,638.56	$775,904.65	$1,378,543.21	$73.833.55
School	Feb. 27/19 Dec. 29/35 Apl. 1/80	[2] 77,854.28	736,705.98	814,560.26	41,576.55
Orphan	Dec. 29/35 Feb. 14/73 Apl. 1/80	22,223.26	337,456.05	359,679.31	18,206.20
Asylum	Feb. 14/73 Apl. 1/80	.....	64,147.17	64,147.17	3,207.37
Totals	.....	702,716.10	1,914,213.85	2,616,929.95	136,823.67

[1] For details, subject to changes noted above, see Annual Report of the Commissioner of Indian Affairs for 1893, pages 531, 532, and 533.

[2] Including $68,000 and $15,000 bonds, belonging to the National and school funds, respectively, abstracted prior to 1861.

Changes since November 1, 1893: National Fund:—$20,406.25, out of funds held in lieu of investment, paid to Choctaws, per act of March 3, 1893, (Stats. 27, p. 638). School Fund: $351.20 added to funds held in lieu of investment, from sales of school lands in Alabama.

The interest due the Cherokee Nation upon its funds has been fully, though not regularly, paid. Owing to the fact that some of the investments were in nonpaying State stocks, and that certain of the bonds had been abstracted, the interest was not regularly received by the United States government, and was not, in every instance, remitted at the precise time due, but taking the transaction as a whole, the interest upon both the nonpaying and the abstracted bonds has been paid in full, so that no foundation for a claim on account of interest now exists. During the war period the interest upon these funds instead of being devoted to the specific purposes contemplated by the division of the maximum fund into national, school and orphan funds, was expended for the support of loyal Cherokees who had been disposessed of their homes and property by reason of the war. Under the circumstances of the Cherokee Nation, it would have been impossible to apply the several items of interest properly belonging to the school and orphan funds to those purposes, as the schools had ceased to exist. In view of the fact that

the interest on these funds were expended for the benefit of the Cherokees for rations, seeds, agricultural implements, clothing and other necessaries of life, no objection can properly be made to this application of this interest. It is understood that the Cherokee Nation makes no objection and raises no question as to the propriety of the interest disbursements during this exceptional period.

On the 4th of June, 1863, $15,000 belonging to the Choctaw orphan reservation fund was remitted to Wm. G. Coffin, Superintendent of Indian Affairs, at Leavenworth, Kansas, and was expended for the relief of persons belonging to the Cherokee Nation. Why the Choctaw funds instead of the Cherokee funds were called upon for this purpose does not clearly appear, but it is evident that there was no warrant for such a diversion: first, by reason of the fact that the Cherokee invested fund at that date amounted to over $800,000: and, secondly, that while it appears from the trust fund ledgers that the interest due the Cherokee Nation had been paid to its treasurer and to Indian Agents on its account to the point of absolute exhaustion, there had accrued and was due to the Cherokee Nation, although not then carried to their credit upon the books, an amount of interest upon the entire fund of the Nation exceeding $100,000, and upon the actual receipts of the sale of the Alabama school land, to an amount exceeding $15,000. By reference to the appropriations of March 1, 1864, and March 3, 1865, it will be seen that at the time of this transaction there was to the credit of the Cherokees a sum many times larger than the amount which was improperly loaned them from the Choctaw funds.

This transaction disappeared from sight and was not brought to light until 1890, when attention was called to it through an examination of the Choctaw accounts made for the use of the Court of Claims in 1889. The Cherokee Nation, therefore, for nearly 30 years, although in possession of ample funds, were unconscious and involuntary borrowers of this sum from the Choctaws. It seems beyond controversy that if the necessities of the Cherokee Nation required the expenditure of $15,000, the amount should have been taken from the interest accrued to their credit, or at any rate from their own fund. The $15,000 was restored to the Choctaw Nation, from interest due upon the Cherokee national funds, by the act of August 19, 1890.[1] By the act of March 3, 1893,[2] the interest on this fund from June 4, 1863, to August 18, 1890, amounting to $20,406.25, was paid to the Choctaws and charged to the Cherokee invested fund. While it is true that the Choctaw fund was subjected to this loss of interest, it is equally true that the Cherokee fund never derived any interest benefit from the expenditure of the $15,000, as it was applied to the relief of individual Cherokees. The consequence of this transaction is that the Cherokee fund has been depleted by this amount of over $20,000, by virtue of a loan which it did not request, and of which it had no knowledge, and which it was in a condition to pay at any moment after the loan was made. Under these circumstances, it seems clear that the Cherokee Nation is entitled to a re-imbursement of this amount, the same to be restored to the principal of their national fund, with interest at the rate of five per centum per annum from the date of the payment to the Choctaws.

On the 29th of November, 1851, the Cherokee National Council, by its proper officers, made a formal statement of the national claims arising

[1] U. S. Statutes at Large, Vol. 26, page 340.
[2] U. S. Statutes at Large, Vol. 27, page 638.

under the treaties of December, 1835, and August, 1846, stating that the several claims as shown in the following numbered paragraphs:

1st. Because no allowance is made for the sums taken from the Treaty fund for removal to the West, although that charge depended on precisely the same words in the treaty of 1835 as did the one year's subsistence, and the Senate unanimously decided on the question, submitted to them as arbitrators, that the item of subsistence was not a proper charge on the Cherokee fund. That had been the decision of the Senate about the date of the treaty when that question was specially presented. It was again so considered by Mr. Poinsett, Secretary of War, in 1838, and his decision was sanctioned by the action of Congress, and an appropriation was made for that purpose; but the estimates being too small by half the Indian fund was then for the first time seized upon.

This claim is finally disposed of by the finding respecting the amount due for removal under treaty of 1835.

2nd. If it be conceded that the Cherokee fund was liable for these charges their amount was limited by the 8th article of the treaty to a certain specified amount and the government had no right to exceed that amount and charge it to the Indian fund.

This also is disposed of by the finding before alluded to.

3rd. We complain that the alternative of receiving for subsistence, $33.33, as provided for in the treaty, was refused to be complied with and the people forced to receive rations in kind at double the cost.

There is no evidence within reach to show whether this complaint is founded upon fact. No specific statement of such claims has ever been presented; but, in any event, that would constitute individual claims and not national claims in the sense in which the term is used under the articles of agreement by authority of which this investigation has been made.

4th. We complain that the rations issued by the Military Commandant at Fort Gibson to "indigent Cherokees" was improperly charged to treaty fund, without any legal authority.

This is also covered by the finding under the treaty of 1835. There seems to be no obligation upon the part of the United States, under any of the treaties, to furnish subsistence to emigrants after one year from the date of their arrival in the western country. The amount referred to, $172,316.47, was expended for subsistence after the expiration of one year, and was a necessary expenditure to save a large proportion of the Western Cherokees from great suffering. Unless the amount is to be re-imbursed as a simple act of charity there is no reason for its restoration, and the finding in this respect is that the charge was a proper and legitimate one against the treaty fund.

5th. We claim that the United States is bound to re-imburse the amount paid to more than 200 or 300 Cherokees who had emigrated to the west prior to 1835. But who were refused a participation in the "Old Settler" fund and thrown on the emigrant party who removed after that date.

This claim seems to be made without foundation since emigrants who removed west subsequent to June 1833 and before the treaty of 1835 were by article 15 of the treaty, as well as by virtue of the terms of the enrollment, entitled to participate in all benefits arising under the treaty of 1835 as Eastern Cherokees, and were not, by reason of their removal, incorporated with the Old Settlers or Western Cherokees.

6th. We claim that the Cherokees who remained in the States of Georgia, North Carolina and Tennessee were not entitled to any share in the per capita fund as they complied with neither of two conditions of their remaining east, both of which were indispensable, and, also, because the census of those Cherokees is, as we believe, enormously exaggerated.

The per capita distribution was made under article 15 of the treaty of 1835, which provides that after deducting from the treaty fund the proper expenses and the amounts set apart for general funds, "the balance whatever the sum may be shall be equally divided between all of the people belonging to the Cherokee Nation east according to the census just completed." The census referred to was taken in 1835 by several agents of the United States Government, and the original is now on file in the Indian Office. This census included the Cherokees residing in the states mentioned in the above claim.

The payments made to the Cherokees in the Indian Territory were based upon a roll made by George Butler in 1851, which was corrected by comparison with the original roll. The census made in North Carolina was based upon a roll made by D. W. Siler in 1851, which roll was also based upon the original. There was not only no exception made to the treaty in this respect to those Cherokees who remained in the east, but it was the understanding at the time the treaty was made that the entire tribe was to participate in the per capita distribution. There is, therefore, no foundation for the above claim.

7th. We complain that the sum of $103,000 has been charged upon the treaty fund for expenses of Cherokees in Georgia three months after they were all assembled and had reported themselves to Gen'l Scott as ready to commence the march.

This is disposed of by the finding under the treaty of 1835, and the appropriation by Congress of the entire sum expended for subsistence, which wholly relieves the treaty fund from all charges for both removal and subsistence.

8th. We claim interest on the balance found due us from the 15th of April, 1851 till paid, Congress having no power to abrogate the stipulations of a treaty.

This claim is also disposed of in the general finding under the treaty of 1835.

9th. We also complain that $20,000 of the fund of the Emigrant Cherokees were taken to pay the counsel and agents of the "Old Settlers" without any authority.

It does not appear that the United States was in any way a party to this transaction, or is either directly or indirectly responsible for it. It appears, from page 139, trust fund ledger No. 1, Indian Office records, that on the 9th day of August, 1846, there was paid to David Vann, Treasurer of the Cherokee Nation, then in Washington, the sum of $51,131.83, which exhausted the accrued interest to the credit of the Cherokee national fund. While it is unquestionably true that $20,000 of this money was loaned to the representatives of the Old Settler party, it was the action of the Treasurer of the Nation, on his own responsibility, and was wholly a transaction between the Cherokee government party and the Old Settler party. There is, therefore, no claim against the United States on account of this advance or loan.

The foregoing statement covers, it is believed, every point of issue which can be raised under the treaties described in the articles of

agreement, and the result of the finding is submitted in the following schedule:

Under the treaty of 1819;	
Value of three tracts of land containing 1,700 acres, at $1.25 per acre, to be added to the principal of the "School" Fund.....	$2,125.00
With interest from Feby. 27,1819, to date of payment.	
Under the treaty of 1835;	
Amount paid for removal of Eastern Cherokees to the Indian Territory, improperly charged to Treaty Fund	1,111,284.70
With interest from June 12, 1838, to date of payment.	
Under treaty of 1866;	
Amount received by Receiver of Public Moneys at Independence, Kansas, never credited to the Cherokee Nation	432.28
With interest from January 1, 1874, to date of payment.	
Under act of Congress March 3, 1893;	
Interest on $15,000 of Choctaw Funds, applied in 1863, to relief of indigent Cherokees, said interest being improperly charged to Cherokee National Fund.....	20,406.25.

With interest from July 1, 1893, to date of restoration of the principal of the Cherokee Funds held in trust in lieu of investments.

JAS. A. SLADE.
JOS. T. BENDER.

V. S. HILLIS, *Stenographer.*

WASHINGTON, D. C., *April 28th, 1894.*

Be it enacted by the National Council: That the report of the accounting agents appointed under an agreement between the United States, and the Cherokee Nation, dated the 19th day of December 1891, to "render to the Cherokee Nation through any agent appointed by authority of the National Council, a complete account of moneys due the Cherokee Nation, under any of the treaties ratified in the years of 1817, 1819, 1825, 1828, 1833, 1835-6, 1846, 1866, and 1868, and any laws passed by the Congress of the United States, for the purpose of carrying said treaties or any of them into effect," that said report signed by James H. Slade and Joseph T. Bender, accounting agents on the part of the United States, and dated April 28, 1894, together with the report of R. F. Wyly, agent of the Cherokee Nation, submitted by him to the National Council, and the same is hereby accepted—the total findings of said accounting agents being $1,133,841.98, (one million, one hundred and thirty-three thousand, eight hundred and forty-one dollars and ninety-eight cents,) with interest at the rate of five per cent per annum, from the various dates of items composing this amount of claim. (See report of accounting agents for dates of items composing this claim.)

Be it further enacted, That the Principal Chief of the Cherokee Nation, at once notify the Secretary of the Interior, and the Commissioner of Indian Affairs, of the acceptance by the National Council of the Cherokee Nation, of said report of accounting agents, and request the Secretary of the Interior, to so notify the Congress of the United States, and ask for an immediate appropriation in accordance with the act of March 3d, 1893, for the ratification of the sale of the Cherokee lands west of the Arkansas River, known as the Cherokee "outlet."

Approved Dec. 1st, 1894.

C. J. HARRIS,
Principal Chief Cher. Nat.

EXECUTIVE DEPARTMENT C. N., *Dec. 15th, 1894.*

I, W. H. Mayes, Asst. Executive Secretary do hereby certify that the above is a true and correct copy of the original, now on file in this office.

W. H. MAYES,
Asst. Executive Secretary.

[SEAL.]

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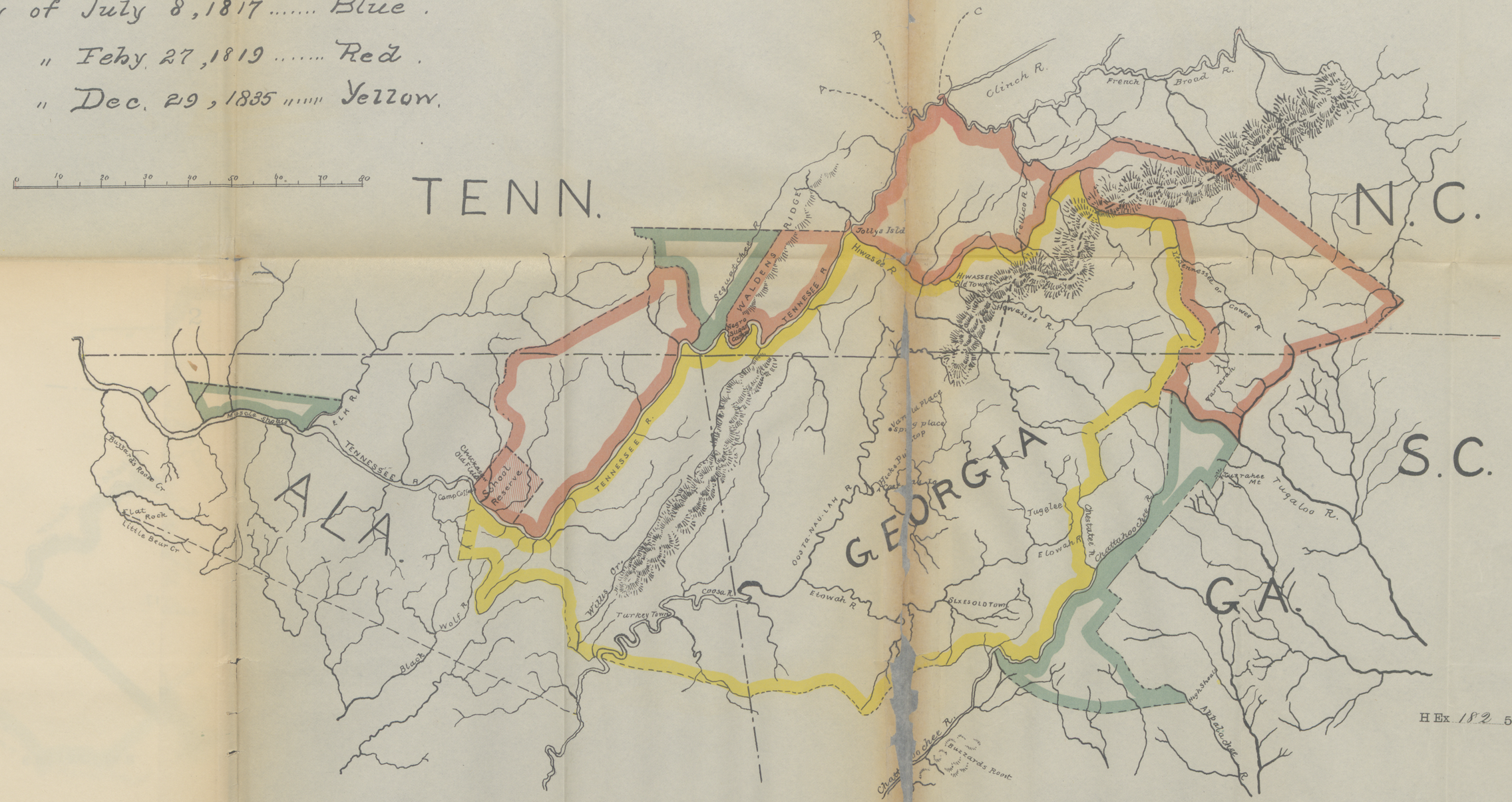
No. 1.

Treaty of July 8, 1817 ..... Blue.
" " Feby. 27, 1819 ..... Red.
" " Dec. 29, 1835 ..... Yellow.



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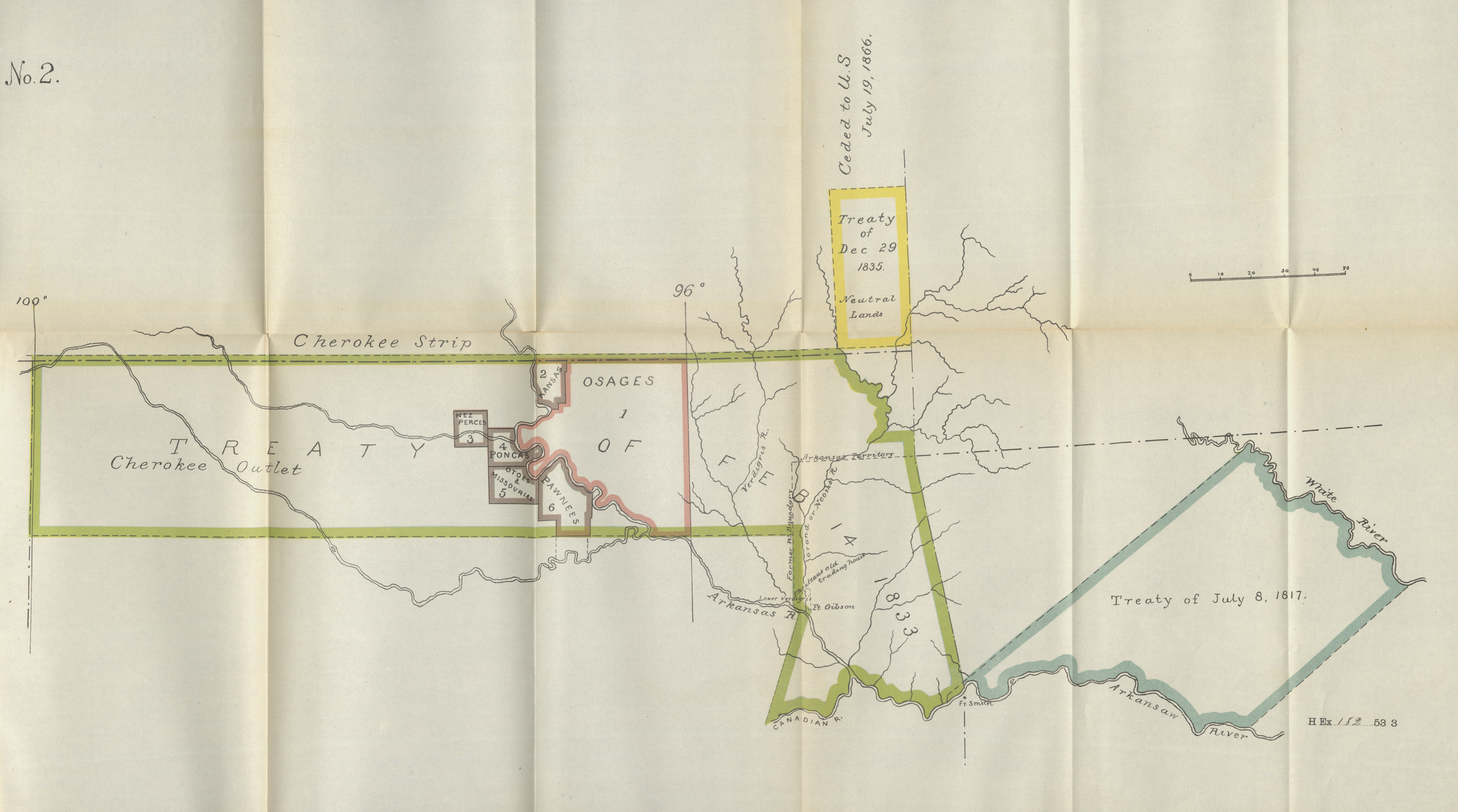
No. 2.



Ceded to U.S
July 19, 1866.
Treaty of Dec 29 1835.
Neutral Lands
100°
96°
Cherokee Strip
TREATY OF FEB 14 1833
Cherokee Outlet
OSAGES 1
2 KANSAS
NEZ PERCES 3
4 PONCAS
OTOES & MISSOURIAS 5
PAWNEES 6
Verdigris R.
Arkansas Territory
Former W. Boundary
Grand or Neosho R.
Chouteaus old trading house
Lower Verdigris
Ft Gibson
Arkansas R.
CANADIAN R.
Ft Smith
Treaty of July 8, 1817.
White River
Arkansaw River
0 10 20 30 40 50
H Ex 182 53 3